

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHNNY DELUIS-MORELOS,

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.,

Defendants.

Case No. C15-310-RSM-BAT

**REPORT AND
RECOMMENDATION**

In July 2014, Johnny Deluis-Morelos, also known as Hector Luis Ramos DeLeon, initiated a habeas action pursuant to 28 U.S.C. § 2241, seeking release from immigration detention on the basis that he is a United States citizen. *See Deluis-Morelos v. U.S. Immigration and Customs Enforcement, et al.*, No. C14-1077-BAT (W.D. Wash.). According to U.S. Immigration and Customs Enforcement (“ICE”), he is a Colombian citizen who is in the United States unlawfully. He has been detained at the Northwest Detention Center since 2012 pending resolution of his removal proceedings. The Court appointed the Federal Public Defender to represent Mr. Deluis-Morelos in that action, and an evidentiary hearing regarding his citizenship claim is scheduled for April 2015.

In January 2015, Mr. Deluis-Morelos filed under case number C14-1077-BAT a civil rights complaint pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971),

1 alleging that ICE Officer Jennifer Sanchez violated his constitutional rights because she detained
2 him as a Colombian citizen despite his assertion that he was born in Puerto Rico. *See* Case No.
3 C14-1077-BAT, Dkt. 28. As relief, Mr. Deluis-Morelos sought release from immigration
4 detention. *Id.* at 4. The Court ordered the Clerk to strike the civil rights complaint from the
5 docket in the habeas action and to file it in its own action. Case No. C14-1077-BAT, Dkt. 39.

6 Now, having reviewed Mr. Deluis-Morelos's *Bivens* complaint, which was filed under
7 the instant case number, the Court recommends that it be dismissed prior to service. Although
8 Mr. Deluis-Morelos attempts to bring a civil rights claim by alleging that Officer Sanchez
9 violated his constitutional rights, his complaint should be construed as a petition for habeas
10 corpus under § 2241 because he challenges the fact of his confinement and seeks release from
11 detention—not monetary damages. *See Tucker v. Carlson*, 925 F.2d 330, 332 (9th Cir. 1991)
12 (court should construe complaint that challenges fact or duration of confinement as a habeas
13 petition pursuant to § 2241). The claims he makes in this action, namely that he should be
14 released because he is a United States citizen, are already before the court in his habeas action,
15 and an evidentiary hearing is scheduled next month to determine his citizenship. If he prevails in
16 that suit, he will be released from detention, which is the only relief he seeks here.

17 Therefore, the Court recommends that this action be **DISMISSED** with prejudice as
18 duplicative of his habeas petition pending under case number C14-1077-BAT. The Clerk shall
19 send a courtesy of this Report and Recommendation to counsel in cause number C14-1077-BAT.
20 A proposed order accompanies this Report and Recommendation.

21 This Report and Recommendation is not an appealable order. Therefore a notice of
22 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
23 assigned District Judge enters a judgment in the case. Objections, however, may be filed and

1 served upon all parties no later than **March 24, 2015**. The Clerk should note the matter for
2 **March 27, 2014**, as ready for the District Judge's consideration if no objection is filed. If
3 objections are filed, any response is due within 14 days after being served with the objections. A
4 party filing an objection must note the matter for the Court's consideration 14 days from the date
5 the objection is filed and served. The matter will then be ready for the Court's consideration on
6 the date the response is due. Objections and responses shall not exceed five pages. The failure
7 to timely object may affect the right to appeal.

8 DATED this 3rd day of March, 2015.

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11 BRIAN A. TSUCHIDA
12 United States Magistrate Judge
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